Feb 23, 1872

Subpoena

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~512.~~ 113

EDWARD J. GAY AND WILLIAM AGAR, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 28, 1870.

Dec'd
March 2 1872

SUPREME COURT OF THE UNITED STATES.

No. 312.

EDWARD J. GAY AND WILLIAM AGAR, APPELLANTS,

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INDEX.

	Original.	Print.
Libel and order thereon	1	1
Admiralty warrant and marshal's return and monition	10	4
Claim of Edward J. Gay	13	5
Rule to bond and marshal's return	14	6
Notice to take testimony and marshal's return	14	6
Testimony of Joseph Brown	15	6
J. H. H. Camp	16	7
W. C. Gray	17	7
N. B Lapointe	18	7
Thomas Dunn	20	8
William Callender	22	9
Order—cause fixed for trial, notice of trial, and marshal's return	23	9
Order discharging rule	24	10
Notice to take testimony and marshal's return	24	10
Testimony of J. McWilliams	26	11
Notice to take testimony and marshal's return	27	11
Testimony of Smith Freeman	28	12
Testimony of William Edwards	31	13
Document "X"	33	14
Document "Y"	34	14
Order—cause fixed for trial	35	14
Hearing and submission	35	14
Note of evidence	35	15
Intervention of Joseph Brown	36	15
Intervention of Luke Dillon	37	15
Judgment decreeing restitution	38	16
Rule to bond	38	16
Order to bond	39	16
Notice to appraisers and marshal's return	40	17

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INDEX.

	Original.	Print.
Libel and order thereon	1	1
Admiralty warrant and marshal's return and monition	10	4
Claim of Edward J. Gay	13	5
Rule to bond and marshal's return	14	6
Notice to take testimony and marshal's return	14	6
Testimony of Joseph Brown	15	6
J. H. H. Camp	16	7
W. C. Gray	17	7
N. B Lapointe	18	7
Thomas Dunn	20	8
William Callender	22	9
Order—cause fixed for trial, notice of trial, and marshal's return	23	9
Order discharging rule	24	10
Notice to take testimony and marshal's return	24	10
Testimony of J. McWilliams	26	11
Notice to take testimony and marshal's return	27	11
Testimony of Smith Freeman	28	12
Testimony of William Edwards	31	13
Document "X"	33	14
Document "Y"	34	14
Order—cause fixed for trial	35	14
Hearing and submission	35	14
Note of evidence	35	15
Intervention of Joseph Brown	36	15
Intervention of Luke Dillon	37	15
Judgment decreeing restitution	38	16
Rule to bond	38	16
Order to bond	39	16
Notice to appraisers and marshal's return	40	17

	Original.	Print
Appraiser's report	40	17
Appraiser's bill	41	17
Bond for release	42	18
Writ of release and marshal's return	44	19
Petition for appeal	45	19
Order allowing appeal	46	19
Citation of appeal and service	46	20
Certificate of clerk of United States district court	47	20
PROCEEDINGS BEFORE THE UNITED STATES CIRCUIT COURT.		
Filing of transcript of appeal	48	20
Hearing and submission	48	21
Claimant's submission	49	21
Reasons for judgment	49	21
Decree	54	23
Petition for a suspensive appeal	55	23
Motion and order allowing appeal	57	24
Bond for appeal	57	24
Clerk's certificate	60	25
Citation of appeal	61	25
Marshal's return thereon, (annexed)	62	26

1 *United States circuit court, fifth circuit and district of Louisiana, No. 3475. Proceedings before the U. S. district court.*

Libel of information.—Filed April 16th, 1864.

United States district court, district of Louisiana.

THE UNITED STATES
vs.
$5,000 IN GOLD. } No. 7862.

To the Honorable Edward H. Durell, judge of the district court of the United States of America for the eastern district of Louisiana.

The libel of information of Rufus Waples, attorney of the United States for the said eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being present here in court in his own proper person, in the name & on behalf of the said United States, against five thousand dollars in gold, of United States coinage,
2 and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges as follows:

First. That George S. Denison, special agent of the Treasury Department, heretofore, to wit, on the 29th day of March, in the year A. D. one thousand eight hundred and sixty-four, at New Orleans, in said district, on the waters of the Mississippi River, or waters navigable from the sea by vessel of ten or more tons burthen, and within the eastern district of Louisiana, and within the jurisdiction of this court, seized and forfeited to the use of the United States the said five thousand dollars in gold, being two hundred and fifty pieces of the value of twenty dollars each, of the coinage of the United States, being the property of some person or persons unknown to the said attorney.

That the said gold was seized on board the steamer "Empire Parish," then leaving the port of New Orleans, by a subordinate officer of the said Denison, being an aid of the revenue department, Luke Dillon by name; and that the said Dillon gave the first information to the said Denison.

That the said gold coin was being transported to Bayou Sara, & to the section of country beyond that place, which said Bayou Sara
3 and section beyond have heretofore been declared to be in insurrection.

That an attempt was made by the owner or possessor of the said gold coin to transport it to Bayou Sara and the section beyond, declared in insurrection as aforesaid.

Second. That by an act of the Congress of the United States, approved July 13, 1861, entitled "An act further to provide for the collection of duties on imports, and for other purposes;" it was provided, among other things, in the fifth section of said act, "that whenever the President, in pursuance of the provisions of the second section of the act, entitled 'An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions, and to repeal the act now in force for that purpose, approved February 28, 1795, shall have called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when said insurgents claim to act under

the authority of any State or States, *and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States*, or in the part or parts thereof in which said combination exists, nor such insurrection suppressed by said State or States; then and in such case it may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any section or part thereof where such insurrection exists, are in a state of insurrection against the United States, & thereupon all commercial intercourse by and between the same and the citizens thereof, and the citizens of the rest of the United States, shall cease and be unlawful so long as such condition of hostility shall continue, and all goods and chattels, wares and merchandise, coming from said State or section into the other parts of the United States, and all proceeding to such State or section by land or water, shall, together with the vessel or vehicle conveying the same or conveying persons to or from such State or section, be forfeited to the United States." And it was further provided and enacted in the sixth section of said act, "that from and after fifteen days after the issuing of said proclamation, as provided in the last foregoing section of this act, any ship or vessel belonging in whole or in part to any citizen or inhabitant of said State, or part of a State, whose inhabitants are so declared in a state of insurrection, found at sea or in any port of the rest of the United States, shall be forfeited to the United States.

This reference approved.) D. URBAN, *Clk.*

4

5 Third. That the President of the United States did, on the 15th day of April, A. D. 1861, issue his proclamation, whereby he, the said President, in view of an insurrection against the laws, Constitution and Government of the United States, which had broken out within the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and in pursuance of the provisions of the act entitled "An act to provide for the calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions, and to repeal the act now in force for that purpose, approved February 28, 1795," did call forth the militia to suppress said insurrection, and to cause the laws of the Union to be duly executed; and that the insurgents have failed to disperse by the time directed by the President; & that such insurrection has since broken out and yet exists within the States of Virginia, North Carolina, Tennessee & Arkansas; and that the insurgents in all the said States claim to act under authority thereof, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof where such combination exists, and that such insurrection has not been suppressed by said States.

6 Fourth. That the President, in pursuance of said act of Congress, approved July 13, 1861, issued his certain other proclamation on the 16th day of August, 1861, wherein he recited among other things, the issuing of his proclamation of April 15th, 1861, and the failure of the insurgents to dispurse by the time directed by the said President, and that the insurgents in all the States in the said proclamation mentioned, claim to act under the authority thereof, and that such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof in which such combination exists, and that such insurrection has not been suppressed by said States; & therefore and thereupon he, the said President, declared, among other things, that the inhabitants of the said States of Georgia, South Carolina, Virginia, North Carolina,

Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, and Florida (except the inhabitants of that part of Virginia lying west of the Alleghany mountains, and of such other parts of the State, and the other States hereinbefore named, as may maintain a loyal adhesion to the Union and Constitution, or may be, from time to time, occupied and controlled by the forces engaged in the dispersion of said insurgents) are in a state of insurrection against the United States, and that
7 all commercial intercourse between the same, and the inhabitants thereof, with the exceptions aforesaid, and the citizens of other States, and other parts of the United States, is unlawful, and will remain unlawful until such insurrection shall cease, or has been suppressed; that all goods and chattels, wares, & merchandise coming from any of said States, with the exceptions aforesaid, * into other parts of the United States, without the special license & permission of the President, through the Secretary of the Treasury, or proceeding to any of said States, with the exceptions aforesaid,* by land or water, together with the vessel or article conveying the same, or conveying persons to or from said States, with said exceptions, will be forfeited to the United States; and that from and after 15 days from the issuing of this proclamation, all ships and vessels belonging, in whole or in part, to any citizen or inhabitant of any of said States, with said exceptions, found at sea, or in any port of the United States, will be forfeited to the United States.

(This reference approved.) D. URBAN, *Clk.*

Fifth. That the inhabitants of the said Bayou Sara, State of Louisiana, and the section immediately beyond, are still in a state of insurrection against the United States, and that the said fifteen days since the issuing of the said proclamation of the 16th of August, 1861, have elapsed before the seizure of the said gold coin.

8 Sixth. That by an act of Congress of the United States of America, approved May 20th, 1862, entitled "An act supplementary to an act approved on the 13th of July, 1861, entitled 'An act to provide for the collection of duties or imports, and for other purposes,'" it was provided among other things in the third section of said act, "That the Secretary of the Treasury be, and he is hereby, further empowered to prohibit and prevent the transportation in any vessel, or upon any railroad, turnpike, or any road or means of transportation within the United States, of any goods, wares, or merchandise, of whatever character, and whatever may be ostensible destination of the same, in all cases where there shall be satisfactory reasons to believe that such goods, wares, or merchandise are intended for any place in the possession, or under the control of insurgents against the United States, or that there is imminent danger that such goods, wares, or merchandise will fall into the possession, or under the control of such insurgents," and that "he may establish all such general and special regulations as may be necessary or proper to carry into effect the purposes of this act; and if any goods, wares, or merchandise, shall be transported in violation of this act, or of any regulation of the
9 Secretary of the Treasury, established in pursuance thereof, or if any attempt shall be made so to transport them, all goods, wares, and merchandise so transported, or attempted to be transported, shall be forfeited to the United States."

Seventh. That by authority of the said third section of the act above mentioned, approved May 20, 1862, the Secretary of the Treasury did, on the 11th day of September, 1863, publish and establish, with the approval of the President of the United States, regulations styled "Trade

Regulations," by the 22d of which all transportation of coin or bullion to any State or section heretofore declared to be in insurrection was and is absolutely prohibited, except for military purposes, and under military orders, or under the special license of the President.

That by reason of the premises, and by virtue of said acts of July 13, 1861, and May 20, 1862, became and are forfeited to the United States.

That all and singular the premises aforesaid are and were true, and within the admiralty & maritime jurisdiction of the United States, and of this honorable court.

Wherefore the said attorney of the United States, on behalf of the said United States, prays that the usual process and monition
10 of this honorable court against the said gold coin in this behalf to be made, and that the persons interested in the said gold coin may be cited to answer in the premises; and that all due proceedings being had thereon, this honorable court may be pleased to decree for the forfeiture aforesaid, and that the said gold coin may be condemned to the use of the United States according to the said acts of Congress, &c.

RUFUS WAPLES,
United States District Attorney.

Let admiralty process issue as prayed for, April 16th, 1864.

K. LOEW, *D'y Clk.*

Admiralty Warrant.—Issued April 16th, 1864.

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take, the five thousand dollars in gold now libelled by the United States, for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every
11 other person or persons having or pretending to have any right, title, or interest, in or to the same, to be & appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said five thousand dollars in gold should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant that you make return according to law.

Witness the Honorable Edward H. Durell, judge of the said court, at New Orleans, this 16th day of April, 1864, and the 88th year of the independence of the United States.

[SEAL.] K. LOEW, *D'y Clerk.*

Marshal's return.

Received April 16th, 1864, and in obedience to the within warrant, seized and took into my possession the within described property. Served copy of warrant and libel on W. C. Gray, d'y U. S. collector, in person, and published monition in the "Daily True Delta," a newspaper printed and published in New Orleans; on 17, 21, 24, 28, 30 April, 1864.

Ret'd 3rd May, 1864.

12 A. BOISBLANC,
D'y U. S. Marshal.

U. S. marshal's monition.

UNITED STATES
vs.
FIVE THOUSAND DOLLARS IN GOLD. } No. 7862.

In the U. S. district court, eastern district of Louisiana.

In obedience to an admiralty warrant to me directed in the above-entitled suit, I have seized and taken into my possession five thousand dollars in gold, now libelled by the United States, for the causes set forth in the libel now pending in the district court of the United States. And I do hereby cite and admonish the owner or owners thereof, and all and every person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said five thousand dollars in gold should not be condemned or forfeited, and be sold agreeably to the prayer of libellants.

United States Marshal's Office, New Orleans, April 16, 1864.

JAMES GRAHAM,
13 *U. S. Marshal.*

Ap'l 17, 21, 24, 28, 30.

Claim of Edward J. Gay.—Filed April 23, 1864.

THE UNITED STATES
vs.
FIVE THOUSAND DOLLARS IN GOLD. } No. 7862.

United States district court, eastern district of Louisiana.

William Edwards, a loyal citizen of the United States, appearing as agent of Edward J. Gay, a resident of the parish of Iberville, and now in said parish, also a loyal citizen of the United States, now comes into court, and intervening for the said Edward J. Gay, for his interest in the five thousand dollars, (*gold,) claims the said five thousand dollars* in gold, and states that the said Edward J. Gay is the true and bona fide owner thereof, and denies that they are forfeited to the use of the United States.

(This reference approved.) D. URBAN, *Clk.*

And thereupon the said claimant prays that this hon. court will be pleased to decree a restitution of the same to him, and otherwise right and justice to administer in the premises.

GEO. L. BRIGHT,
Counsel for Claimant.

WILLIAM EDWARDS, being sworn says, that he is duly author-
14 ized by said Edward J. Gay, owner, as aforesaid, to make this claim, and that all the allegations in the aforesaid claim are true.

W'M EDWARDS.

Sworn to & subscribed before me this 23rd April, 1864.

K. LOEW, *D'y Clk.*

Rule to bond.—From minutes of April 25th, 1864.

UNITED STATES
vs.
$5,000 IN GOLD.

On motion of Geo. L. Bright, att'y for Edward J. Gay, claimant, it is ordered that the district attorney show cause, on Thursday next, 28th inst., at 10 a. m., why he should not be allowed to bond the $5,000 seized in this case, upon his giving bond with good and solvent security, conditioned as the law directs.

Marshal's return.

Received April 25th, 1864, and on the same day served a copy of the within rule on Rufus Waples, dist. att'y, personally.

JOHN CHRISTIE,
D'y U. S. Marshal.

Notice to take testimony.—Issued April 26th, 1864.

15 United States district court, eastern district of Louisiana.

UNITED STATES
vs.
5,000 DOLLARS IN GOLD. } No. 7862.

To GEO. L. BRIGHT, Esq.:

You are hereby notified that testimony will be taken in the above cause on Tuesday, 26th day of April, 1864, at the clerk's office, on behalf of libellants.

N. O., April 26th, 1864.

[SEAL.] K. LOEW, *D'y Clerk.*

Marshal's return.

Received, April 26th, 1864, 12 m., and on the same day and year served a copy of the within notice at the domicil of Geo. L. Bright, in the hands of Mrs. Bright.

N. O., April 26, 1864.

M. EGAN,
D'y U. S. Marshal.

Testimony before clerk.—Filed April 26th, 1864.

UNITED STATES
vs.
$5,000 IN GOLD.

Testimony taken in presence of district attorney. Absent, George L. Bright, esq.:

JOSEPH BROWN, sworn for United States, says:

16 I know Mr. J. Freeman. Saw him on board the steamer Empire Parish, when I was porter, some time last March; I took a black carpet-bag on board this boat for Mr. Freeman; I don't know

what the bag contained; put it under a table for Mr. Freeman; it was a carpet-bag—a glazed bag. I think Mr. Freeman was going to Bayou Sara with this bag. This bag was seized by Mr. Dillon, the revenue aid; I saw Mr. Dillon take the bag away from the boat in the port of New Orleans, shortly before the boat left port. Mr. Freeman was in the habit of travelling on board the Empire Parish; saw him also travel on board the Black Hawk.

JOSEPH BROWN.

J. H. H. CAMP, sworn for U. S. says:

I was on board the boat at the time the seizure took place; saw Mr. Dillon take a carpet-bag from on board the boat; saw him go on the levee with it. Afterwards I saw Mr. Dillon at the custom-house with a carpet-bag that lay on the counter; can't say that it was the same carpet-bag that was taken from the Empire Parish. The same gentleman that went with Mr. Dillon when the latter carried the carpet-
17 bag from the boat was with Mr. Dillon at the custom-house; I think I have met the same person I saw with Mr. Dillon going off the Empire Parish on board the Mittie Stephens and J. H. Russell. I have met the same person that I saw go off the Empire Parish with Mr. Dillon 2 or 3 times; don't know his name; can't say what his business is. I reside in New Orleans; am agency aid, and have been since 3d December, 1863. Don't remember whether the Empire Parish ran to Bayou Sara or to Natchez.

J. H. H. CAMP.

W. C. GRAY, sworn for U. S., says:

I am d'y collector, and in charge of the department in the absence of Mr. Denison. I have the general charge of granting permits, whether Mr. Denison is here or not. Mr. E. J. Gay never received a permit from the department to transport gold from this city, neither has anybody else. The regulations expressly forbid the transportations of gold. Applications have been universally refused. Mr. William Edwards
18 never received any permit to transport gold from this city since the organization of the department. I have been there since June, 1862. I must have been in the office when the agency aid, Mr. Dillon, came there with Mr. Freeman, because the $5,000 in gold was received by me. Other gold has been received and seized by me. Don't recollect that any other specie has been seized, except that which has been turned over by me to the district attorney. None has been delivered, except upon the order of court. I have now a correspondence from Washington in regard to $300 in specie, which has not yet been turned over to the district attorney, and has not been delivered up. Not all the seizures are reported to the district attorney. I should judge that ¾ of the seizures are reported to the district attorney. All the proper seizures are reported to the district attorney; those that are under consultation, and where we don't think it is a proper case for confiscation, are withheld.

W. C. GRAY.

N. B. LAPOINTE, sworn for U. S., says:

I have known Mr. Freeman since last Sept. Freeman's first name is,
I think, John C. Freeman's business for the last 5 or 6 months has been to speculate in cotton. I know he bought some cotton at
19 Cat Island; he did also buy some at Bayou Sara from Dr. Joe Smith, but could not ship it because I had a claim over him. Dr.

Joe Smith lives about 4 miles from Bayou Sara, left-hand side going to the country, which is plainly within the rebel lines. Mr. Freeman told me that he had $4,000 or thereabouts in gold in his carpet bag, which was not his, but belonged to Mr. Gay, and that his bag, with the gold, had been taken from him by the revenue aid. He further said he did not care much about it, as the gold was not his, but that of Mr. Gay. This conversation took place between the 20th & 29th March last; about two weeks ago, I think. It must have been after the seizure, because Freeman told me the revenue officer had taken it from him. Some time after, in going up on the Empire Parish to Bayou Sara, Freeman, pointing out a person to me, (which is Mr. Dillion, now present at the examination,) said, This is the man who took the bag with the gold from me. Dr. Noyes, the owner of the J. H. Russell, refused Freeman to go after his cotton, which was some twenty miles above Bayou Sara, in
20 consequence whereof the cotton was burnt by the rebels. I have been in the cotton business too. We pay from 40 to 45 cents per pound in the confederacy. Prices vary much. The offer by Freeman to the captain of the J. H. Russell was some 4 or 5 weeks before the seizure. Freeman told me he was carrying this gold into the confederacy to buy cotton, but not for himself. I don't know that Mr. Freeman has business connection with the house of W'm Edwards & Co.; don't know who he consigns his cotton to; don't know who 'is consignee is. I suppose Freeman was buying the cotton for the man for whom he had the gold; but I can't say that it was so; don't know that E. J. Gay ships cotton to New Orleans. I cannot swear that Mr. Freeman was buying cotton for E. J. Gay, but I can swear that Freeman told me that he carried this gold to buy cotton with in the confederacy, and that the gold belonged to E. J. Gay. Freeman was buying cotton in partnership with a man named Lytle. This I know from experience.

N. B. LA POINT.

THOMAS DUNN, sworn for U. S., says:

I know Freeman by sight; saw Mr. Dillon come out of the Em-
21 pire Parish with two carpet-bags in his hands. This was about 29th March last, at about 5 p. m. *The Empire Parish leaves at 5 p. m.* I saw Mr. Dillon at the custom-house, with Mr. Freeman; immediately after saw Dillon & Freeman count the money of one of the carpet-bags; saw the gold taken out of the carpet-bags and put on the counter, where it was counted at the custom-house. There were $20 gold pieces; can't say how much there was. Freeman was present all the time the money was being counted. Mr. Freeman told me he was going up the river. The Empire Parish was in the habit of going to Bayou Sara; had no conversations with Mr. Freeman after this gold transaction. Freeman was in the habit of travelling on board the Black Hawk. I am an agency aid of the Black Hawk; been on the Empire Parish & Mittie Stephens as such. I have met Freeman very often at Bayou Sara, and I think he used to buy cotton there. Mr. Freeman could not, and nobody else could, ship cotton on board a vessel on which I was agency aid, without my knowing it. I consider that Mr. Freeman is a cotton speculator; don't know who he consigns the cotton to; don't know of any cotton that Mr. Freeman ever shipped, either from Bayou
22 Sara or any other point, to any consignees here; but I know that he shipped cotton on board boats. The manifest of every boat shows who the shipper and consignee of any cargo is. In my capacity of agency aid it is my duty to make a copy of the manifest and permits,

(This reference approved.)
D. URBAN, *Clk.*

and send it to the custom-house; have been agency aid on board steamers since July last.

THOMAS DUNN,
Agency Aid.

WILLIAM CALLENDER, sworn, says:

I am the keeper of the boat-house, which is the store where all the goods seized are placed; was so on 29th March last. I saw Mr. Dillon & Freeman come to the boat-house that day, open one of the carpet-bags, place the money on the counter; counted one package. Mr. French was also with them. This package which they counted consisted in twenty-dollar gold pieces, and amounted to one thousand dollars. There were five such packages. This gold remained in my possession until next morning, when I delivered to Mr. Dillon. I cannot say whether the third party, besides Mr. Dillon and French, was actually Mr. Freeman, but they called him so, and he claimed the money. I know Mr. Dil-
23 lon; he is one of the revenue aids. Mr. French, who was present, is the chief of the aids.

W'M CALLENDER.

Order.—Cause fixed for trial.—From the minutes of April 27th, 1864.

UNITED STATES } No. 7862.
vs.
$5,000 IN GOLD.

On motion of the district att'y, it is ordered that this cause be assigned for trial on Saturday, 30th inst., at 10 a. m., and that the claimant be notified hereof.

Notice of trial.—Issued April 27th, 1864.

United States district court eastern district of Louisiana.

UNITED STATES } No. 7862.
vs.
$5,000 IN GOLD.

To GEO. L. BRIGHT, esq.

You are hereby notified that the above cause has been assigned for trial on Saturday, 30th instant, at 10 a. m.

By order of court.

N. O., April 27th, 1864.

[SEAL.]

K. LOEW,
D'y Cl'k.

24 *Marshal's return.*

Received April 27th, 1864, and served a copy on Geo. L. Bright in person.

April 28th, 1864.

J. CHRISTIE,
D'y U. S. Marshal.

Order discharging rule.—From minutes of April 28, 1864.

UNITED STATES } No. 7862.
vs.
$5,000 IN GOLD.

The rule taken by the claimant, on the 25th inst, came on this day for trial—Geo. L. Bright, for plaintiff in rule; district attorney for libellant; when, after hearing argument of counsel, it is ordered by the court that the rule be discharged with costs.

Notice to take testimony.—Issued April 28th, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES } No. 7862.
vs.
$5,000 IN GOLD.

To RUFUS WAPLES, esq.

You are hereby notified that testimony will be taken in the above
25 cause, on Thursday, the 28th day of April, 1864, at the clerk's office, on behalf of claimants, at 2½ p. m.

N. O. April 28th, 1864.

[SEAL.]

K. LOEW,
D'y Clk.

Marshal's return.

Received April 28th, 1864, and on the same day and year, served a copy of the within notice on Rufus Waples, esq., personally, in the city of New Orleans.

N. O., April 28, 1864.

M. EAGAN,
D'y U. S. Marshal.

Order and continuance.—From minutes of April 30th, 1864.

UNITED STATES } No. 7862.
vs.
$5,000 IN GOLD.

By consent of parties, it is ordered that this cause be continued indefinitely.

Notice to take testimony.—Issued May 3d, 1864.

UNITED STATES } No. 7862.
vs.
$5,000 IN GOLD.

To RUFUS WAPLES, esq.

You are hereby notified that testimony will be taken in the
26 above-entitled cause, on Tuesday the 3d day of May, 1864, at the clerk's office of said court, on behalf of claimants, at 2½ o'clock, p. m.

N. O., May 3rd, 1864.

[SEAL.]

K. LOEW,
D'y Clk.

Marshal's return.

Received May 3d, 1864, at 9¼ a. m., and same day served a copy of the within notice on Rufus Waples, esq., U. S. dist. att'y, E. D. of La., by leaving it in the hands of C. S. Kellogg, esq., att'y at law, in the office of the U. S. dist. att'y aforesaid.

J. CHRISTIE,
D'y U. S. M.

Testimony taken in presence of district attorney & Geo. L. Bright, May 3d, 1864.—Filed May 3d, 1864.

J. McWILLIAMS, sworn for claimant, says:

I reside in the town of Plaquemine, parish of Iberville. I know Ed. J. Gay. He resides a mile and a quarter below Plaquemine, on the Mississippi River. He has resided there some 12 or 14 years to my knowledge. He resided there in all the month of March and April, 1864. Ed. J. Gay's residence was within the military lines of the U. S.
27 The U. S. forces had permanent and exclusive possession of the locality of Mr. Gay's place, and the neighborhood around, since December last, and the whole coast of the parish of Iberville, fronting the Mississippi River. Ed. J. Gay, is a loyal citizen of the U. S. I know Mr. W'm Edwards, doing business in New Orleans. He acts as Mr. Gay's commission merchant.

Cross-examined:

I am not interested in this suit at all. I have been told that Edwards and Gay are not in partnership. Edwards acts as Mr. Gay's commission merchant. Mr. Gay has been buying cotton lately, and for about a year and a half he has done so; don't know who are Mr. Gay's agents in the purchase of cotton.

Re-examined:

I know it is the custom for people in the country, living within the military lines of the U. S. to purchase gold to keep, and for investment.

(Objected to by libellant as illegal and improper.)

J. McWILLIAMS.

Notice to take testimony.—Issued May 7th, 1864.

United States dist. court, eastern district of Louisiana.

28 UNITED STATES } *vs.* $5,000 IN GOLD. } No. 7862.

To the DISTRICT ATTORNEY:

You are hereby notified that testimony will be taken in the above cause on Saturday, the 7th day of May, 1864, at the clerk's office, on behalf of claimant, at 2½ p. m.

N. O. May 7th, 1864.

[SEAL.]

K. LOEW,
D'y Clk.

Marshal's return.

Received 7th May, 1864, and, on the same day and year, served a

Order discharging rule.—From minutes of April 28, 1864.

UNITED STATES
vs. } No. 7862.
$5,000 IN GOLD.

The rule taken by the claimant, on the 25th inst, came on this day for trial—Geo. L. Bright, for plaintiff in rule; district attorney for libellant; when, after hearing argument of counsel, it is ordered by the court that the rule be discharged with costs.

Notice to take testimony.—Issued April 28th, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs. } No. 7862.
$5,000 IN GOLD.

To RUFUS WAPLES, esq.

You are hereby notified that testimony will be taken in the above
25 cause, on Thursday, the 28th day of April, 1864, at the clerk's office, on behalf of claimants, at 2½ p. m.

N. O. April 28th, 1864.

[SEAL.] K. LOEW,
D'y Clk.

Marshal's return.

Received April 28th, 1864, and on the same day and year, served a copy of the within notice on Rufus Waples, esq., personally, in the city of New Orleans.

N. O., April 28, 1864.

M. EAGAN,
D'y U. S. Marshal.

Order and continuance.—From minutes of April 30th, 1864.

UNITED STATES
vs. } No. 7862.
$5,000 IN GOLD.

By consent of parties, it is ordered that this cause be continued indefinitely.

Notice to take testimony.—Issued May 3d, 1864.

UNITED STATES
vs. } No. 7862.
$5,000 IN GOLD.

To RUFUS WAPLES, esq.

You are hereby notified that testimony will be taken in the
26 above-entitled cause, on Tuesday the 3d day of May, 1864, at the clerk's office of said court, on behalf of claimants, at 2½ o'clock, p. m.

N. O., May 3rd, 1864.

[SEAL.] K. LOEW,
D'y Clk.

Marshal's return.

Received May 3d, 1864, at 9¼ a. m., and same day served a copy of the within notice on Rufus Waples, esq., U. S. dist. att'y, E. D. of La., by leaving it in the hands of C. S. Kellogg, esq., att'y at law, in the office of the U. S. dist. att'y aforesaid.

J. CHRISTIE,
D'y U. S. M.

Testimony taken in presence of district attorney & Geo. L. Bright, May 3d, 1864.—Filed May 3d, 1864.

J. McWILLIAMS, sworn for claimant, says:

I reside in the town of Plaquemine, parish of Iberville. I know Ed. J. Gay. He resides a mile and a quarter below Plaquemine, on the Mississippi River. He has resided there some 12 or 14 years to my knowledge. He resided there in all the month of March and April, 1864. Ed. J. Gay's residence was within the military lines of the U. S.
27 The U. S. forces had permanent and exclusive possession of the locality of Mr. Gay's place, and the neighborhood around, since December last, and the whole coast of the parish of Iberville, fronting the Mississippi River. Ed. J. Gay, is a loyal citizen of the U. S. I know Mr. W'm Edwards, doing business in New Orleans. He acts as Mr. Gay's commission merchant.

Cross-examined:

I am not interested in this suit at all. I have been told that Edwards and Gay are not in partnership. Edwards acts as Mr. Gay's commission merchant. Mr. Gay has been buying cotton lately, and for about a year and a half he has done so; don't know who are Mr. Gay's agents in the purchase of cotton.

Re-examined:

I know it is the custom for people in the country, living within the military lines of the U. S. to purchase gold to keep, and for investment.

(Objected to by libellant as illegal and improper.)

J. McWILLIAMS.

Notice to take testimony.—Issued May 7th, 1864.

United States dist. court, eastern district of Louisiana.

28 UNITED STATES *vs.* $5,000 IN GOLD. } No. 7862.

To the DISTRICT ATTORNEY:

You are hereby notified that testimony will be taken in the above cause on Saturday, the 7th day of May, 1864, at the clerk's office, on behalf of claimant, at 2½ p. m.

N. O. May 7th, 1864.

[SEAL.]

K. LOEW,
D'y Clk.

Marshal's return.

Received 7th May, 1864, and, on the same day and year, served a

copy of the within notice on Rufus Waples, esq., U. S. attorney, personally.

N. O. May 7th, 1864.

M. EGAN,
D'y U. S. Marshal.

Testimony.—Filed May 7th, 1864.

UNITED STATES *vs.* $5,000 IN GOLD. } No. 7862.

Testimony taken in presence of the district attorney and Geo. L. Bright, esq., May 7th, 1864.

SMITH FREEMAN, sworn for claimant, says:

On or about the 29th of March last this gold was seized. I was in New Orleans, on the Empire Parish at that time, and had taken
29 passage on that steamer. I had 5,000 dollars in gold with me, put up in 5 packages, in my carpet-bag. This gold was handed to me in New Orleans by Mr. W'm Edwards, in his office, who requested me to hand the same to Edward J. Gay, at his plantation, two miles below Plaquemine, and in case neither he or his agent should be there to receive it, I should hand it to Capt. Ayles at Plaquemine, to be returned to New Orleans. Mr. Gay never said anything to me about what he was going to do with the gold. The gold was taken from me by the revenue officer on the Empire Parish; & is the same gold I had received from Mr. Edwards for Mr. Gay, that is seized in this case. I have no interest whatever in the gold. I know a man, named Lapointe, but don't know his initials. I never told Lapointe that I was carrying the gold into the confederacy to buy cotton with.

(Libellants object to the question as leading.)

I could not have told such a damned lie as that; as the gold did not belong to me, and I had no interest in it whatever, I only took it up as a matter of accom'odation for Mr. Gay. I was going to Bayou Sara on the trip wherein the gold was taken from me, and not upon any cotton speculation at all.

Cross-examined:

30 My first name is Smith—Smith Freeman. I recognize Mr. Gay's signature to doc't. now shown me. This letter is addressed to me. I think I have seen it before; it was in my carpet-bag that contained the gold. I am acquainted with Mrs. Baynes; she lives about 5 miles from Bayou Sara on the West Feliciana Railroad. I am also acquainted with Mr. Klein; he was acting for Mr. Gay, or rather for Mr. Barrow, in his place.

(Being asked if Mr. Gay got any cotton, and how much, from Mrs. Baynes, 5 miles from Bayou Sara, counsel for the claimant tells the witness not to answer, and thereupon the witness refuses to answer. The objection of claimant's counsel is that the question is irrelevant.)

With the $12,000 named in Letter X, I was to purchase cotton; these were my instructions.

(Being shown Doc't "Y", says:)

I recognize Mr. Gay's signature to it. I don't know that Mr. Gay has any partner.

(Being asked, Did you buy cotton for Mr. Gay? counsel for claimant instructs the witness not to answer, and he thereupon refuses so to do.)

(Being asked, Where did you buy any cotton? Upon the objections of the counsel for claimant, the witness refuses to answer.)

I have been doing nothing for the last two months. I was at
31 Bayou Sara I think when *when* I received letter marked X but won't be positive. W'm Edwards I understand to be Mr. Gay's commission merchant. He receives his shipments of sugar and molasses and sells whatever Mr. Gay ships to him. Mr. Ayles used to be capt' of the Black Hawk, and afterwards the Empire Parish. I have a room at the corner of Circus and Gravier streets in this city, where I stop when in town.

SMITH FREEMAN.

W'M EDWARDS, sworn for claimant, says:

I am a member of W'm Edwards & Co, of New Orleans. About 29th March, 1864, I handed Mr. Freeman $5,000 in gold, to be delivered to Mr. Gay, either at his plantation two miles below Plaquemine, or at Plaquemine, in the parish of Iberville, within Federal lines. Mr. Freeman took the gold. This gold was put up in five packages of $1,000 each, and was in Freeman's carpet-bag. The boat upon which this gold and Mr. Freemen went, was to land and deliver supplies at Mr. Gay's plantation. I never had any intimation whatever that the gold was to be used for commercial purposes. Mr. Gay wanted it for his private use, to keep; this was my understanding. Freeman promised to de-
32 liver the gold there; it is the same gold taken from Freeman by the revenue officer.

Cross-examined:

W'm T. Gay, Mr. Hanekamp, and myself compose the firm of W'm Edwards & Co. My impression is that this gold was intended by Mr. Gay for his private use, and for no commercial purposes. I don't know for what purposes it was to be used. Mr. Gay did not tell me for what purposes he intended to use it. He merely sent to me for that much gold; that is all I know about it. I am Mr. Gay's commission merchant. I sell for him what he sends to the city for sale. He ships to me for sale the products of the country—sugar, molasses, cotton. Mr. Gay is a sugar planter; he also raises cotton. He don't make many bales of cotton now, but sugar considerably. I believe Mr. Gay has been buying cotton. Don't know that bought any from Mrs. Baynes, but think not; don't know that he bought any from Mrs. Smith, back of Bayou Sara. I received some cotton from Bayou Sara but can't tell where it was bought. Mr. Lytle was, I believe, the shipper of that cotton. I paid Mr. Freeman his share in the profits of the proceeds of some
33 cotton shipped at Bayou Sara; this was before the gold transaction. I paid Freeman about $600 which was a final settlement between Freeman and Gay. In some transactions of cotton, Mr. Freeman was interested in the profits with Mr. Gay. Don't know where Freeman bought his cotton. I know of no business connection between Lyttle and Gay. Part of the proceeds of cotton shipped at Bayou Sara went to Mr. Gay; some to another party—a New Yorker.

(Being asked, How much cotton did Mr. Freeman ship to you for Mr. Gay's account? deponent refuses to answer, upon the instructions of his att'y.)

W'M EDWARDS.

Reëxamined by claimant:

The witness, Edwards, states that he never had any knowledge or in-

timation that the gold he handed to Freeman was intended to be used in the purchase of cotton. I don't think it is necessary to have gold to buy cotton. It is not.

W'M EDWARDS.

SMITH FREEMAN, reëxamined, says:

All the cotton that I had anything to do with was paid for before it was shipped to New Orleans. I never had any gold for the object of buying cotton with.

SMITH FREEMAN.

Document "X."

PLANTATION, 29 *Febr'y*, 1864.

34 Mr. S. FREEMAN.

DEAR SIR: Your boat was so late that I could not pass the pickets to go into place.

I send you herewith the permit, which has still room for a good many stepts.

The revenue aid can tell you how many bags of seed cotton are counted as one bale.

I send by the clerk, say twelve thousand dollars, for you to invest, if you see safe opportunity so to do, and at a price which you think will pay.

If Mr. Klein gets in any cotton for me from Mrs. Baines please aid him in shipping it. Mr. David Barrow left here to-day for New Orleans.

Very respectfully y'rs,

EDWARD J. GAY.

Let me *here* from you.

Document "Y."—Filed May 7th, 1864.

PLAQUEMINE, 28 *Mar.*, '64.

W. EDWARDS & Co.

GENTS.: Shipped you yesterday per steamer Bella Donna all freight remaining.

Expect to be down at early day, health of my family being much better. Remit no funds to me. Safe to hold in the store.

Remember my obligation due in New York in April.

In haste, (p'r Banks,) y'rs,

35 E. J. GAY.

Order.—Cause fixed for trial.—From minutes of May 9th, 1864.

UNITED STATES } No. 7862.
vs.
$5,000 IN GOLD }

By consent of parties in open court this cause is assigned for trial on to-morrow, 10th inst., at 10 a. m.

Hearing and submission.—From minutes of May 10th, 1864.

UNITED STATES } No. 7862
vs.
$5,000 IN GOLD. }

This cause came up for trial—district attorney for libellant; Geo. D. Bright for claimant—

When, after hearing the pleadings, evidence, and argument, the court took time to advise.

Note of evidence.—Filed May 10th, 1864.

UNITED STATES
vs.
$5,000 IN GOLD. } No. 7862.

36 Libellants offered in evidence the admiralty warrant, monition, and marshal's return; the testimony of J s. Brown and others, filed May 7th, 1864.

The claimant offered the evidence of J. McWilliams, filed May 3d, 1864, and the evidence of Smith Freeman and others, filed May 7th, 1864.

Intervention of Joseph Brown.—Filed 13th May, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
5,000 DOLLARS IN GOLD. } No. 7862.

To the honorable the judge of the district court of the United States for the eastern district of Louisiana:

Your petitioner, Joseph Brown, a loyal citizen of the United States, residing in the city of New Orleans, respectfully represents to this honorable court that the five thousand dollars in gold libelled herein by the United States were seized on the information of your petitioner; & that the first information was given by your petitioner to Luke Dillon, an aid to the revenue department.

Wherefore, the premises being considered, your petitioner prays that he be allowed to intervene and interplead in said case, and claim the share which he may be allowed by the court as the first informer, as aforesaid, and he further prays for general relief, &c.

37 JOSEPH BROWN.

Sworn to and subscribed before me this 13th May, 1864.
K. LOEW, *D'y Clk.*

Intervention of Luke Dillon.—Filed May 14th, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
5,000 DOLLARS IN GOLD. } No. 7862.

To the Hon. E. H. Durell, judge of the district court of the United States, for the eastern district of Louisiana:

Your petitioner, Luke Dillon, a loyal citizen of the United States, residing in the city of New Orleans, respectfully represents that he is the person who seized the (5,000) five thousand dollars libelled in this

case, and was the first and only person who gave the information which caused the said five thousand dollars to be libelled.

Therefore, the premises considered, petitioner prays to intervene in the cause, and claim one-fourth of said five thousand dollars, and that after due legal proceedings had, that he have judgment for one-fourth of said five thousand dollars, and for such further relief as the case may require. And petitioner will ever pray.

38 LUKE DILLON.

THOS. J. EARHART, *Proctor.*

Sworn to and subscribed before me this 14th May, 1864.

K. LOEW, *D'y Clk.*

Judgment decreeing restitution.—From minutes of May 20th, 1864.

UNITED STATES
vs.
5,000 DOLLARS IN GOLD. } No. 7862.

For the reasons assigned in the written opinion of the court delivered and on file in the case of the United States vs. 5,100 dollars in specie, No. 7787 of the docket: It is ordered, adjudged and decreed that the gold libelled in this case be restored to the claimant, and that reasonable cause of seizure be and the same is hereby entered of record.

Judgment rendered May 20th, 1864.

Judgment signed May 25th, 1864.

E. H. DURELL, *Judge.*

Rule to bond.—From minutes of May 21st, 1864.

UNITED STATES
vs.
5,000 IN GOLD. } No. 7862.

On motion of Geo. L. Bright, att'y for E. J. Gay, claimant, and
39 showing that judgment was rendered against the United States, ordering the $5,000 gold to be restored to the claimant: It is ordered that the district attorney show cause on Monday, 23d May, 1864, why the claimant should not be permitted to bond said gold.

Order allowing to bond.—From minutes of May 24th, 1864.

UNITED STATES
vs.
5,000 DOLLARS IN GOLD. } No. 7862.

The rule taken by claimant on 21st inst. came up—

Hewes, esq., on behalf of Geo. L. Bright, for pl'ff in rule; district attorney for libellant—

When, after hearing counsel, it is ordered that the rule be made absolute, and that in conformity to the practice of the courts of the United States, of admiralty and maritime jurisdiction, H. G. Heartt and C. Claiborne be appointed appraisers to value the property libelled herein, and that it be delivered to the claimant, on giving bond in a sum exceeding by one-half the appraised value thereof, with good and solvent security, conditioned as the law directs.

40 *Notice to appraisers.—Issued May 24th, 1864.*

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
5,000 DOLLARS IN GOLD. } No. 7862.

TO HEARTT AND CLAIBORNE:

Take notice that you have been this day appointed appraisers for the purpose of ascertaining the value of the property libelled in this case, and you are to file the report of your appraisement within the shortest possible delay.

By order of court,
N. O., May 24th, 1864.
[SEAL.]

K. LOEW,
D'y Clk.

Marshal's return.

Received 24th May, 1864, and on the same day served a copy of the within notice on Charles Claiborne and H. G. Heartt personally.

J. H. NOBLE,
D'y U. S. Marshal.

Appraisers' report.—Filed May 25th, 1864.

SIR: We, the undersigned duly appointed appraisers, have examined the $5,000 in twenty-dollar gold pieces, American coin, and are
41 of opinion that the actual market value of the said coin, and we do therefore appraise the same as follows:

In accordance with instructions in suit No. 7862, United States versus 5,000 dollars in gold, we have examined the market, and find that the 5,000 dollars in 20-dollar gold pieces, American gold, is worth this day (the buying rate paid by the bankers is) $1 92, being 92 % premium, and we, therefore, appraise the above at this day, 12 m., at nine thousand six hundred dollars, legal-tender currency, ($9,600 00.)

H. G. HEARTT &
CHARLES CLAIBORNE,
Appraisers.

N. O., *May 25th* 1864.

Appraisers' bill.—Filed May 25th, 1864.

IN THE MATTER OF THE U. S.
vs.
$5,000 IN GOLD, $20 GOLD PIECES, AMERICAN coin. } No. 7862.

N. O., MAY 25TH, 1864.

To appraisers, H. G. Heartt & Ch's Claiborne, Dr.

1864.
May 25. For app. five thousand dollars, American gold, $9,600, at ½ %. $48 00

Rec'd payment.

42 *Bond for release.—Filed May 25th, 1864.*

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

Know all men by these presents that we, Edward J. Gay, by William Edwards, claimant and owner of the 5,000 dollars in gold, seized herein, as principal, and William Agar as surety, are held and firmly bound unto the United States, libellant, in the sum of fourteen thousand four hundred dollars, lawful money of the United States of America, for the payment whereof to the said United States, or assigns, we jointly and severally bind ourselves, our heirs, and executors, and administrators firmly by these presents.

Witness our respective names and seals hereunto affixed by us at New Orleans this 25th day of May, one thousand eight hundred and sixty-four.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States for the eastern district of Louisiana, at the suit of the United States vs. Five Thousand Dollars in in Gold, and numbered 7862 on the docket of the said court, commanding the marshal to seize and take into his possession the said gold, which has been seized accordingly, but has been released from
43 seizure and delivered to Ed. J. Gay, the claimant & owner thereof, by reason of the signing, sealing, and delivery of these presents, said Ed. J. Gay having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such that, if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

EDW. J. GAY,
By W'M EDWARDS. [L. S.]
WILLIAM AGAR. [L. S.]

Signed, sealed, and delivered in the presence of—
K. LOEW, *D'y Clk.*

[50-cent stamp.]

William Agar, the surety on the within bond, being sworn, says he is worth the sum of $14,400 over and above all the liabilities, and resides in this city.

WILLIAM AGAR.

Sworn to and subscribed before me this 26th May, 1864.
K. LOEW, *D'y Clk.*

44 *Writ of release.—Issued May 25th, 1864.*

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
5,000 DOLLARS IN GOLD. } No. 7862.

The President of the United of America to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

Whereas Edw. J. Gay, owner & claimant of said gold, hath filed a

claim thereto on behalf of himself, and obtained leave of court to bond the same, and which said claim is now of record in this office—

You are hereby authorized to release the said gold from seizure, and it to restore to the possession and custody of said claimant, he having given bond conditioned as required by the order of court, and otherwise complying with the rules of the court, &c., and make return hereon of your doings in the premises.

Witness the Hon. Edward H. Durell judge of said court at New Orleans, this 25th day of May, A. D. 1864, and the 88th year of the independence of the United States.

[SEAL.]

K. LOEW,
D'y Clk.

45 *Marshal's return.*

Received May 26th, 1864, and on the same day, in obedience to the within writ, I released from seizure the property seized in this case, to wit, 5,000 in gold, and delivered the same to Edw. J. Gay, the claimant thereof.

Ret'd May 27, 1864.

A. BOISBLANC,
D'y U. S. M.

Petition for appeal.—Filed May 31st, 1864.

UNITED STATES
vs.
5,000 DOLLARS IN GOLD. } No. 7862.

United States district court, eastern district of Louisiana..

The petition of Rufus Waples, attorney of the United States, in the name and in the behalf of the United States of America, libellant herein, respectfully represents:

That judgment was rendered by this hon. court in the above-entitled cause on the 25th day of May, 1864, in favor of the claimant and against the libellant.

That he, the said libellant, in behalf as aforesaid, feels aggrieved by the said judgment.

Wherefore he prays this hon. court to grant him an appeal
46 from said judgment to the hon. the circuit court of the United States for the said eastern district district of Louisiana, returnable on the first Monday of November next.

RUFUS WAPLES,
U. S. Att'y.

Order allowing appeal.

An appeal is allowed in this case as prayed for, returnable to the circuit court of the United States, for the eastern district of Louisiana, the first Monday of November next, the appellant being dispensed by law from giving bond and security in judicial proceedings.

May 31st, 1864.

E. H. DURELL,
Judge.

Citation of appeal annexed to transcript.

United States district court, eastern district of Louisiana.

UNITED STATES } No. 7862.
vs.
$5,000 IN GOLD.

The United States of America to Edw. J. Gay, claimant, greeting:

You are hereby cited and admonished to be and appear before the circuit court of the United States for the 6th circuit and eastern district of Louisiana, to be holden in the city of New Orleans, State
47 of Louisiana, on the first Monday of November next, to answer the appeal taken by the United States, libellant in this cause, and that you show cause, then and there, if any there be, why the judgment rendered against the said United States on 20th May, 1864, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. H. Durell, judge, this 31st day of May, in the year of our Lord 1864, and the 88th of the American independence.

(Signed) E. H. DURELL,
Judge.

Marshal's return.

Rec'd May 31, 1864, and on the 3d day of June served a copy of the within citation on George L. Bright, esq'r, att'y for E. J. Gay, claimant, in person.

Signed J. A. NOBLE,
D'y U. S. Marshal.

Certificate of the clerk of the U. S. district court.

District court of the United States, eastern district of Louisiana.

I certify that the foregoing 52 pages do contain and form a correct & complete transcript of the original record, as well as of all the
48 proceedings had, documents filed, and evidence adduced on the trial of the case of The United States vs. $5,000 in gold, No. 7862 of the docket.

In testimony whereof, I hereunto set my hand and the seal of said court at New Orleans, this 13th day of July, A. D. 1864, and the 89th year of the American independence.

[SEAL.] (Signed) K. LOEW, *D'y Clk.*

[5-cent stamp U. S. int rev. affixed and cancelled.]

Proceedings before the U. S. circuit court.—Transcript of appeal.—Filed October 12th, 1864.—Hearing and submission.

Circuit court of the United States, fifth circuit and district of Louisiana.
April term, 1870.

NEW ORLEANS, *Friday, April 29th*, 1870.

Court met pursuant to adjournment. Present, Hon. W. B. Woods, presiding judge. Absent, Hon. E. H. Durell, district judge.

UNITED STATES
vs.
$5,000 IN GOLD. } No. 3475.

This cause came on to be heard on the transcript of the record
49 from the district court of the U. S. for the district of Louisiana—Dist. Att'y Long for U. S., appellants; G. L. Bright, for appellee, not present.

And after hearing the pleadings and the evidence in the records and argument on behalf of appellants, the cause was submitted on brief presented by the appellee.

Claimant's submission.—Filed April 29, 1870.

UNITED STATES
vs.
$5,000 IN GOLD. } No. 3475.

I submit this cause on the authority of U. S. vs. $5,100 in specie, No 3472 of the docket of this court, a copy of which is hereto annexed.

(Signed) GEO. L. BRIGHT,
Att'y for E. J. Gay, Claimant.

Copy of reasons for judgment.—Filed April 29th, 1870.

U. S. district court.

UNITED STATES
vs.
$5,100 IN SPECIE. } No. 7787.—Reasons for judgment.

50 By act of Congress, approved May 20th, 1862, entitled an act supplementary to an act approved on the 13th of July, 1861, it is provided that the Secretary of the Treasury be, and he is hereby, further empowered to prohibit & prevent the transportation in any vessel or upon any railroad, turnpike, or any road or means of transportation within the U. S. of any goods, wares, or merchandize of whatever character, & whatever may be the ostensible destination of the same, in all cases where there shall be satisfactory reasons to believe that such goods, wares, or merchandize are intended for any place in the possession or under the control of insurgents against the U. S., or that there is imminent danger that such goods, wares, or merchandize will fall into the possession or under the control of such insurgents, and that he may establish all such general or special regulations as may be necessary or proper to carry into effect the purposes of this act, & if any goods, wares, or merchandize shall be transported in violation of this act, or of any regulations of the Secretary of the Treasury established in pursuance thereof, or if any attempt shall be made so to transport them, all goods, wares, and merchandize so transported, or attempted to be trans-
51 ported, shall be forfeited to the United States.

In pursuance of this act the Secretary of the Treasury did, on the 11th of September, 1863, prescribe, establish, and publish the following regulation, being part of No. 22 of the "Trade Regulations" prescribed by said Secretary.

All transportation of coin or bullion to any State or section, heretofore declared to be in insurrection, is absolutely prohibited, except for

military purposes and under military orders, or under the special license of the President.

It has been already determined by this court, after listening to an able argument against the constitutionality of the act of May 20, 1862, that Congress might well and properly confer upon the Secretary of the Treasury the very large powers enumerated in said act and embodied in the Secretary's Trade Regulations of the 11th Sept., 1863. We have, therefore, in this case, only to consider whether the subject-matter libelled therein has been proved to have fallen within the prohibition contained in the portion of Regulation No. 22, above quoted.

52 The collector of internal revenue, located at New Orleans, seized the gold and silver coin libelled at the steamboat landing at Donaldsonville, the same being then in the possession of the claimant and owner, in the act of being transported from New Orleans to Napoleonville.

Napoleonville is within the federal lines, and within that portion of Louisiana which was represented in the 37th Congress of the United States as having returned to its fealty to the National Government.

The Secretary's regulations reads, "All transportation of coin or bullion to any State or section heretofore declared to be in insurrection, is absolutely prohibited, except for military purposes and under military orders, or under the special license of the President."

In this case there has been no transportation of coin or bullion to any State or section heretofore declared to be in insurrection.

The proof is that there has been a transportation of coin within a section heretofore declared to be in insurrection, which is a very different matter.

53 The purpose of the Secretary's regulation—the end to be reached thereby—is easily enough to be perceived. It closes the door against the movement of coin or bullion from abroad, or from a loyal State or section heretofore declared to be in insurrection, which movement could only be either in aid of the rebellion, or for the purpose of an illicit trade with the enemies of our country. It does not prohibit the movement of coin or bullion within a State or section in rebellion, because such a prohibition is wholly unnecessary, for coin or bullion so moving is fit subject for capture, & becomes, when taken, spoils of war. Neither does it prohibit the movement of coin or bullion within a section heretofore declared to be in insurrection, but which section has been reclaimed by the Federal arms, unless the animus of such move-

(This reference approved.) D. URBAN, *Cl'k.*

ment is shown to be an * intent to aid the rebel cause, or to carry on an * illicit trade with the enemy. No such intent has been shown by the Government in this case. The claimant declares himself to be a loyal citizen of the United States, & his declaration is not questioned. Taking, then, the fact of loyalty for granted, & reversing the movement of the coin, would the claimant have been interrupted had he have been transporting the coin libelled

54 from Napoleonville to New Orleans? The interpretation put upon the Secretary's regulations by the Government in this case should inhibit the movement of coin from New Orleans to our close neighbor, the city of Jefferson.

Let the coin libelled be restored to claimant.

E. H. D., *Judge.*

MAY 9*th*, 1864.

True copy.
[SEAL.] (Signed) K. LOEW,
D'y Cl'k.

Decree.

United States circuit court, fifth circuit and district of Louisiana, April term, 1870.

NEW ORLEANS, *Tuesday, May 31st*, 1870.

Court met pursuant to adjournment.

Present, his honor J. P. Bradley, associate justice of the supreme court, presiding.

Present, his honor W. B. Woods, judge of the circuit court.

UNITED STATES *vs.* $5,000 IN GOLD. } No. 3475.

55 For reasons orally assigned, it is ordered, adjudged, & decreed that the judgment rendered by the district court on 20th May, 1864, be avoided & reversed. And it is now ordered, adjudged, and decreed by this court that the $5,000 in gold libelled herein, be, and the same is hereby, condemned as forfeited to the United States. And considering that the libelled property was released from seizure & restored to the claimant upon giving bond, conditioned as the law directs, it is further ordered and decreed that Edw. J. Gay, by William Edwards, claimant and owner of said gold, as principal, and W'm Agar, as surety on the release bond, be condemned in solido to pay the United States the sum of five thousand dollars in gold and costs of suit.

Decree rendered May 31, 1870.

Decree signed June 4th, 1870.

(Signed) W. B. WOODS, *Judge.*

Petition for a suspensive appeal.—Filed June 7th, 1870.

THE UNITED STATES *vs.* $5,000 IN GOLD. } No. 3475.

To the honorable the circuit court of the United States for the fifth circuit and district of Louisiana:

56 The petition of Edward J. Gay and William Agar respectfully shews that judgment was rendered by the United States district court, eastern district of Louisiana, on 20th May, 1864, decreeing the gold libelled in this suit be restored to claimant; that the United States appealed to this court, and, on the 31st May, 1870, this court condemned the $5,000 in gold as forfeited to the United States, and further ordered your petitioners Edward J. Gay, claimant, as principal, and William Agar, as surety on release bond, to pay in solido the $5,000 in gold and costs.

That your petitioners are aggrieved by said judgment.

Wherefore they pray that a suspensive appeal to act as a supersedeas be allowed them therefrom, returnable to the next term of the Supreme Court of the United States, upon their giving bond, conditioned according to law, with good and solvent security thereon, in such sum as the court may direct. They pray for general relief.

(Signed) GEO. L. BRIGHT,
Counsel for Pet'rs.

57 *Motion and order allowing appeal.—Extract from the minutes of June 7th, 1870.*

UNITED STATES
vs.
$5,000 IN GOLD. } No. 3475.

On motion of Geo. L. Bright, counsel for Edward J. Gay and William Agar, and on presenting and filing a petition in their behalf, representing that they are aggrieved by the decree of this court herein rendered on 31st May, 1870, and signed on and are advised that *their* is error therein to their prejudice, and praying a suspensive appeal therefrom, to act as a supersedeas, to the next term of the Supreme Court of the U. S., it is ordered that the same be allowed as prayed for on motioners giving bond conditioned according to law, in the sum of six thousand (gold) dollars, with good and solvent security thereon.

Bond for appeal.—Filed June 7th, 1870.

THE UNITED STATES
vs.
$5,000 IN GOLD. } No. 3475.

58 Know all men by these presents, that we, Edward J. Gay and William Agar, as principals, and Samuel Smith, as surety, are held and firmly bound, jointly & severally, unto the United States of America, in the sum of six thousand dollars in gold, lawful money of the United States of America, to be paid to the said United States of America, or assigns, for which payment well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated the seventh day of June, in the year of our Lord eighteen hundred and seventy.

Whereas Edward J. Gay and William Agar, have this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for an appeal to the Supreme Court of the United States, from a final decree rendered against them, on the 31 May, 1870, and signed on on the 4th of June, 1870, in a suit wherein the said United States are libellants and appellants, and the said Edward J. Gay and W'm
59 Agar, claimants of $5,000 in gold are defendants and appellees, No. 3475 of the docket of said circuit court:

Now the condition of the above obligation is that we, the above bounden Edward J. Gay and William Agar, will well and truly pay to the said United States of America, the defendants in said appeal, all such damages and judgment as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) EDWARD J. GAY. [L. S.]
" WILLIAM AGAR. [L. S.]
" SAM. SMITH. [L. S.]

Signed, sealed and delivered in the presence of—

Samuel Smith, surety on the within bond, being duly sworn, deposes

and says, that he is worth the sum of six thousand dollars in gold over & above his just debts and liabilities.

(Signed) SAM. SMITH.

Sworn to & subscribed before me this 7th June, 1870.

(Signed) F. B. VINOT, *D'y Clk.*

60 United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify, that the foregoing 59 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of The United States vs. $5,000 in Gold, No. 3475 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 12th day of August, A. D. 1870.

[SEAL.] D. URBAN, *Clerk.*

[5-cent int. rev. stamp, affixed and canceled.]

I, Edward H. Durell, United States judge for the district of Louisiana, do hereby certify, that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 12 day of August, A. D. 1870.

E. H. DURELL, *Judge.*

[5-cent int. rev. stamp, affixed and canceled.]

61 THE UNITED STATES OF AMERICA,
District of Louisiana.

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition for appeal & an order of record and filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Edward J. Gay and William Agar, are appellants, and you are defendants & appellees, to show cause, if any there be, why the judgment rendered against the said appellants as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this eighth day of June, in the year of our Lord one thousand eight hundred and seventy.

W. B. WOODS,
Circuit Judge, 5th Circuit.

62 (Indorsed:) United States circuit court. No. 3475. The United States vs. $5,000 in Gold. Citation of appeal.

Marshal's return.

Received Jun. 8, 1870, by the U. S. marshal, and on the 15th day of June, 1870, served a copy of the within citation of appeal on the United States of America, through A. B. Long, U. S. attorney for the district of Louisiana, by delivering the same to said attorney in person, at his office in the custom-house building, in this city.

New Orleans, June 15, 1870.

S. W. REED,
D'y U. S. Marshal.

(Indorsement on cover:) No. 312. Edward J. Gay and William Agar, appellants, vs. The United States. Louisiana C. C. U. S. Filed 28 November, 1870.

Supreme Court of the United States.

December Term, 1871. No.

EDWARD J. GAY ET AL., APPELLANTS.

vs.

THE UNITED STATES, APPELLEE.

APPELLANTS' BRIEF.

B. T. MERRICK,
for Appellant.

Supreme Court of the United States.

December Term, 1871, No.

EDWARD J. GAY ET AL., APPELLANTS.

versus

THE UNITED STATES, APPELLEE.

APPELLANTS' BRIEF.

The appellants' counsel state the following errors in the decree of the court below, viz:

1. The matters charged in the libel constitute no offence under the laws of the United States.

2. The matters alleged in the libel and the supposed offence there charged, are not supported by the evidence, and there is a material and fatal variance between the matter articulated, and the evidence.

3. At the time of the trial, the supposed offence of the claimant had been fully obliterated by the various amnesty proclamations, and there was no ground for the confiscation of the claimant's property, at the date of the trial and final decree.

After the President of the United States, by his

proclamations of July 4, 1868, and of 25th of December of the same year, unconditionally and without reservation, to all and every person, who directly or indirectly participated in the late insurrection or rebellion, has granted full pardon and amnesty; there can be but little interest in the government of the United States in prosecuting what seems to have been an innocent act, and which, but for the treasons of others, now fully pardoned, could not have been by any inge nuity construed into any offence at all.

The record shows that the claimant, Edward J. Gay, an honorable merchant and planter, was domiciled within the Federal lines in Louisiana, and was during the war a loyal citizen of the United States. His loyalty frees him from suspicions which might attach in other cases, and entitles him to the presumption of innocent conduct until legal proof establishes the contrary.

The matter in controversy in this case is the sum of five thousand dollars in the gold coin of the United States, belonging to the claimant, Edward J. Gay, and seized under admiralty process on the steamboat Empire Parish, in the port of New Orleans, on the 25th of March, 1864.

The district judge, who knew the high standing of Mr. Gay, Mr. Edwards and the other witness, was of the opinion that no offence was committed, and ordered by his decree, the money returned to Mr. Gay. R. p. 21. The opinion of the district judge is found on

page 21 of the record. Judge Woods, the circuit judge, on appeal to the Circuit Court, reversed that decree of the District Court, May 31, 1870, and condemned the coin (as confiscated) to the government. His reasons were given orally.—Rec. p. 23.

The charge made in the libel is, "that the said gold was seized on board the steamer Empire Parish then leaving the port of New Orleans, by a subordinate officer of the said Denison, being an aid of the revenue department, Luke Dillon by name, and that said Dillon gave the first information to the said Denison."

"That the said *coin was being transported to Bayou Sara and to the section beyond, declared to be in insurrection.*"

"That an attempt was made by the owner or possessor of said gold coin, to transport it to Bayou Sara and the section beyond, declared in insurrection as aforesaid."—Rec. p. 1.

It is further articulated in the libel, "that the inhabitants of the said Bayou Sara, State of Louisiana, and the section immediately beyond, are still in a state of insurrection against the United States, and after the said fifteen days since the issuing of said proclamation of the 16th August, 1861, have elapsed before the seizure of the said gold coin."—P. 3.

And that the secretary of the treasury did, on the eleventh day of September, 1863, in pursuance of the act of Congress, approved May 20, 1862, establish,

with the approval of the President of the United States, trade regulations, by the 22d of which all transportation of coin or bullion to any State or section heretofore declared to be in insurrection, was absolutely prohibited except for military purposes, and under military orders or under special license of the President.

The gold, in another place, is charged to consist of 250 pieces, of the value of twenty dollars each, of *the coinage* of the United States, the property of some person or persons unknown to the said attorney.

I

In framing the libel, the district attorney does not seem to have had a very definite idea of what law was applicable to his case. So he sets forth the act of July 13, 1861, 12 vol. Statutes at Large, 257, and the 3d section of the act of 20th May, 1862.

The two acts are quite distinct. The sixth section of the act of May, 1861, was intended to prohibit commercial intercourse between such parts of the United States as should be declared in a state of insurrection and the rest of the United States. The goods to be declared forfeited, were those proceeding from the one section to the other. It should be charged, to hold goods under this act, that they were proceeding from some place set forth in the libel, not in insurrection, to some other place, declared to be in insurrection. This does

not seem to be alleged in the libel, in accordance with this act.

If it was the intention of the counsel to prove the libel, under the 3d section of the act of 20th of May, 1862, it should have been alleged that the goods, wares and merchandise were intended for some named place, in the possession or under the control of insurgents against the United States, and that said goods were transported within the United States, in violation of the act, or that an attempt, which shall be set forth and alleged, was made so to transport them from some portion of the United States, not in insurrection, by some act within the United States, to some place in the possession or under the control of the insurgents. The libel ought to state, with sufficient clearness to put the owner of the goods seized on his guard, the facts which shall bring him clearly within the one or the other of the acts of Congress, in order that he may know with what offence he is charged. A general allegation that a party attempted to do a certain act, as already said, is insufficient; it should state, if an attempt only be relied on, the act which constitutes the attempt.

Again, the prohibition in the act of 1861 was against the transportation of "goods, chattels, wares and merchandise," to or from the State or section declared to be in insurrection. The act of 1862 prohibits the transportation of any goods, wares or merchandise, of whatever character, to places under the control of in-

surgents. The object of these acts was to prevent the insurgents from obtaining supplies of merchandise, which they were supposed greatly to need. The conveying of money, which is so easily transported, and is ordinarily carried about the person, was not thought of by Congress, when these acts were passed. Hence, *Congress* left money to the laws of war, and did not declare a specific penalty for going to or from the insurgent territory, with money about the person or with the baggage of a traveller. Gen. Butler sent many persons out of New Orleans, because they would not subscribe to the oaths which he prescribed. Such persons were obliged to take money with them or starve. Now, it would have been unreasonable to say that these acts of Congress would work the forfeiture of the wearing apparel and money of these misguided people, when the laws of war were sufficient to regulate all cases of the kind. Now, that during the war (owing to the anxiety of the executive authority to prevent the efflux of gold, and extend the circulation of greenbacks, which had not been thought of when the acts in question were passed) a new policy, preventing as far as possible, the use of coin in ordinary dealing, and especially in buying with it cotton, had been developed, the acts in question did not authorize the secretary of the treasury to add a new provision to either of these acts.

Acts declaring forfeiture cannot be extended, by implication or by analogy, to other matters. Coin, in

common parlance, is not goods, wares nor merchandise nor chattels. Had Congress intended to embrace money, coin of gold or silver, it would have said so, and we think very few persons in the United States, and especially those to be affected by the provision, would imagine that goods, wares and merchandise or chattels, meant money. In Tomlin's Law Dictionary, verbo chattels, it is said, "money hath been accounted not to be goods or chattels; nor are hares or hounds, such being *ferae naturae.* 8 Rep. 33; Terms de Ley. 103; Kitch, 32." Not having the works at hand, we are unable to verify the citations. 1 Bishop on Criminal Law, sec. 219, says of goods and chattels: "It seems also that these words do not include anything which circulates as money, or rather it has been so held under some English statutes, where, perhaps, the question depended *in fact, on the relation of these words to others in the enactment.*" The phrase, goods, wares and merchandise, does not in the slightest degree imply money, the thing for which goods, wares and merchandise are sent to market, and for which they are sold. The case of Rex vs. Leigh, 1 Leach Rep. 52, was for larceny, under an act of parliament, which took away the benefit of clergy from those who shall steal "any goods, wares or merchandise," of the value of forty shillings, in any vessel upon any navigable river. It was held by the court, that the "dollars" and "two guineas," stolen, being money, were not within the description of either goods, wares or merchandise. So,

also, in Grimes' case, 2 East. 646, 647; Foster, 79; see also, 1 Bishop, sec. 149, and note 7.

This must be more apparent from the fact, that money does not often appear upon the manifest of a vessel, or pay any freight. Those having the vessel in charge are ordinarily unaware of the money which the traveling public have in possession, on board. It would be monstrous to forfeit a vessel, for what its officers could not prevent, and yet, such would be the case if it were held, that money was included under the term of goods, chattels, wares and merchandise, mentioned in the act of 1861. The regulations of the Secretary of the treasury to be established *in pursuance of an act*, could not embrace subjects not confided to him by the act. On these grounds, we conclude the libel is deficient, in charging an offence under the statutes pleaded.

II

Edward J. Gay became the claimant in the suit for the money.—P. 5.

The court will perceive from the record, that the forfeiture is claimed, because *coined money* was being transported by some one (in violation of the regulaions of the secretary of the treasury) to *Bayou Sara* and the *region beyond*, declared to be in insurrection.

The satisfactory answer to this charge is: There is no legal proof, that there was any intention to take the gold to Bayou Sara and the region beyond, but on

the contrary, it was proven by positive evidence that there was no such intention.

The only proof, save the fact of seizure, it seems to us, offered on behalf of the government to substantiate the charge in the libel, as to removal, was one N. B. La Point, a witness, who, among other things, said: "I cannot swear that Mr. Freeman was buying cotton for E. J. Gay, but I can swear that Freeman told me that he carried this gold to buy cotton with, in the Confederacy, and that the gold belonged to E. J. Gay. Freeman was buying cotton in partnership with a man named Lytle."—P. 8

This hearsay testimony of statements, made after seizure (p. 8), is completely destroyed by claimant's positive testimony. J. M. Williams says he resides in the town of Plaquemine, on the Mississippi river, and that Edward J. Gay resides a mile and a quarter below the town of Plaquemine, on the Mississippi river, and resided there all the months of March and April, 1864. "That his residence was within the military lines of the United States. The United States forces *had permanent and exclusive possession* of the locality of Mr. Gay's place, and the neighborhood around, since December last (1863) and the whole coast of the parish of Iberville, fronting the Mississippi river. E. J. Gay is a loyal citizen of the United States." Says he knows Mr. William Edwards, doing business in New Orleans. He acts as Mr. Gay's commission merchant.—P. 11.

Smith Freeman, sworn for claimant, says: On or

about the 29th of March last (1864), this gold was seized; I was in New Orleans, on the Empire Parish, at that time, and had taken passage on that steamer; I had 5,000 dollars in gold with me, put up in five packages in my carpet bag; this gold was handed to me in New Orleans, by Mr. William Edwards, in his office, who requested me to hand the same to E. J. Gay, at his plantation, two miles below Plaquemine, and in case neither he nor his agent should be there to receive it, I should hand it to Capt. Ayers, at Plaquemine, to be returned to New Orleans. Mr. Gay never said anything to me about what he was going to do with the gold. The gold was taken from me by the revenue officer, on the Empire Parish, and is the same gold I had received from Mr. Edwards, for Mr. Gay, that is seized in this case; I had no interest whatever in the gold. I know a man named La Pointe, but don't know his initials; I never told La Pointe that I was carrying the gold into the Confederacy, to buy cotton with." P. 12. He says in another place, that Mr. Ayres used to be captain of the Black Hawk, and afterwards of the Empire Parish.

William Edwards, sworn for claimant, says: "I am a member of Wm. Edwards & Co. of New Orleans. About 29th of March, 1861, I handed Mr. Freeman $5,000 in gold, *to be delivered to Mr. Gay either at his plantation two miles below Plaquemines, or at Plaquemine in the parish of Iberville, within the Federal lines.* Mr. Freeman took the gold. This gold was put up in

packages of $1,000 each, and was in Mr. Freeman's carpet bag. *The boat upon* which this gold and Mr. Freeman went was to land and *deliver supplies* at Mr. Gay's plantation. I never had any intimation whatever that the gold was to be used for commercial purposes. Mr. Gay wanted it for his private use, to keep: this was my understanding. Freeman promised to deliver the gold there. It is the same gold taken from Freeman by the revenue officer." (Page 13.) On page 14, he says: he don't think gold necessary to buy cotton with.

This testimony of claimant's witnesses is unimpeached, and there is not a particle of pertinent evidence to contradict it, save the imperfect and contradicted hearsay of La Pointe of a conversation of a third person after the seizure.

Some effort was made, it seems, in the Court below, to give evidence of some other transactions, but they have nothing to do with the charge in the libel, and the letter of the 29th of February, 1864, shows that what was done was done under a government permit. We cannot think that the United States will insist upon, or the Court will heed, this sort of evidence, but will presume that Mr. Gay, a loyal citizen in his other dealings, acted under his permits from the treasury as his letter clearly implies. If any other complaint is relied on, it should be alleged, in order that claimant may justify his conduct.

The Court will find these letters on page 14, and

some cross-examination by the district attorney on pages 12 and 13.

There is no proof in the record, even that the Empire Parish was bound for Bayou Sara the day that the seizure was made.

A glance at the map will show that Plaquemine is a long distance—say thirty miles by water—below Baton Rouge, which was also held by the Union army. It is therefore incredible that the Empire Parish was, on the 29th day of March, 1864, on a voyage to Bayou Sara, then held by the Confederates, and in a state of insurrection; for Dillon, instead of seizing the cotton, would have seized the steamboat if the military or naval authorities had not anticipated him. She might have intended to go to Baton Rouge or Plaquemine, and such is the probability. It is true that Le Point, some time after the seizure of the money, implies being on the Empire Parish by these words: "in going up on the Empire Parish to Bayou Sara;" and Thos. Dunn says that "the Empire Parish was in the habit of going to Bayou Sara."

With New Orleans, Donaldsonville, Plaquemine, Baton Rouge and Port Hudson permanently in the hands of the Federal armies, it is not probable the Empire Parish ever visited Bayou Sara when held by the Confederates; and when she did go up, it was with the Federal gunboats and proper permits.

It is proper to remark, that none of the witnesses of the Government were subjected to a cross-exami-

nation, and that where claimant's witnesses declined to answer certain irrelevant questions, it was because they were instructed not to answer by claimant's counsel.

No candid man can read the testimony, we submit, and say that there was any intention to transport the gold in controversy to Bayou Sara and to the section beyond, places alleged in the libel to be declared to be and still (when the libel was filed) in insurrection.

If not, the allegation has not been sustained, and there is a failure of proof. Now, we take the law to be well settled that in these proceedings a party can only recover *secundum allegata et probata.* The proofs must support the allegation. The allegation is descriptive of the offence, and nothing done or omitted less than the offence set forth can sustain it. Doubtless, if the proof had shown that one thousand dollars of the gold coin described had been, or was attempted to be sent to the *place described* in the libel, it would have supported the *allegations* of the libel pro tanto, but surely proof that such a sum was sent to a point below New Orleans, or to another ward in the city, or to the adjoining parish, or to some other place or county within the Federal lines, would not snstain the charge, because the testimony fails to meet the description of the offence charged, and the act, as in the case in question, might be entirely innocent. The rule of law is, that the libel "must state the facts necessary to entitle the libellant to a remedy."

Benedict, sec. 402, ed. 1870. "The case is decided *secundum allegata et probata, and the proof must correspond to the allegations.*" Id. sec. 417, ed. 1870; The Boston, 1 Sumner, 331.

This high Court has said, in a similar case: "The rule that a man shall not be charged with one crime and convicted of another, may sometimes cover real guilt, but its observance is essential to the preservation of innocence. It is only a modification of this rule that the accusation on which the prosecution is founded, should state such a crime as will justify the judgment to be pronounced." "The reasons of the rule are: 1st. That the party accused may know against what charge to direct the defence;" 2d. That the Court may see with judicial eyes that the fact alleged to have been committed is an offence against the laws, and may also discern the punishment annexed by law to the specific offence. *These reasons apply to prosecutions in Courts of Admiralty with as much force* as to prosecutions in other courts. It is therefore a maxim of the civil law, that the decree must be *secundum allegata* as well as *secundum probata.* It would seem to be a maxim essential to the due administration of justice in all courts."—Schooner Hoppet vs. United States, 7 Cranch, 393, 394.

Conkling says: "It is, however, an inflexible principle in Courts of Admiralty, no less than in all other courts, that no evidence is admissible in a cause except such as relates to express allegations on the one side

or the other therein."—See 2 Conklin's Admiralty, p. 24 *in extenso.*

Greenleaf says. "Thus, as to the relevancy of evidence, it is a rule in admiralty, that the proofs and allegations must coincide; evidence of facts not put in contestation by the pleadings, and allegations of facts not established by the proofs will alike be rejected."

3 Greenleaf, sec. 403.

It being essential to the prosecution, therefore, that the offence relied on should be stated in the libel, and that the place in the insurgent territory to which the coin was being transported should be named and described, such designation then became descriptive of the offence, and the allegation cannot be sustained by proof of an act of transportation to some other territory or place. It is not, then, a question of numbers, quantity or magnitude, but is descriptive *of a matter legally essential* to the claim and charge. Without an allegation of the *place* to which the goods were being transported, there could be no recovery. It is true the libellant may, if he pleases, embrace in his allegation a large or small territory to which the goods are being transported, but having the power to allege the fact as he pleases in his *description* of the offence, he cannot sustain his allegation by proof of an act of transportation to another place. If he could, the claimant would be at the mercy of the libellant. It will not do, as just said, to prove that the claimant was about to send the gold to Texas or Alabama, or

to the parish of Plaquemines or Fort Jackson below New Orleans, or to the town of Plaquemine above New Orleans; for such is not the offence alleged. "It seems, indeed, to be an universal rule, that a plaintiff or prosecutor shall in no case be allowed to transgress those limits which, in point of description, limitation and extent, he has prescribed for himself; he selects his own terms, in order to express the nature and extent of his charge or claim. He cannot, therefore, justly complain that he is limited by them. To allow him to exceed them would, for the reasons adverted to, be productive of the greatest inconvenience." 4 Starkie Ev. (old ed.) p. 1531, late edition, p. 629.

On the preceding page, old edition, Starkie says (and Greenleaf reiterates the same doctrine): "It is a most general rule, that no allegation which is *descriptive* of the identity of that which is legally essential to the claim or charge can ever be rejected." 4 Starkie, p. 1529, new edition, 730; 1 Greenleaf, sec. 56.

Now, it was legally essential to the charge, that both the place within the loyal and non-prohibited districts from which the goods were being transported should be named, with proper averments, and the place to which, in the possession of the insurgents, with like averments, should be stated, in order that the Court might see that an offence had been committed. Without these averments, there is no offence charged. Such averments are therefore descriptive, and *must be proven as alleged*, as shown by the author-

ities, and especially by the case of Schooner Hoppet vs. United States. 7 Cranch, 393.

The libel charges—

"That an attempt was made by the owner or possessor of the said gold coin to transport it to Bayou Sara and the section beyond, declared in insurrection as aforesaid."

This general allegation, by itself, is meaningless, as no act which constituted the attempt is set forth in the libel. The only effect it could, by any possibility, have would be to qualify the act of transportation first alleged so as to make that equivalent to an attempt to transport. By the act approved the 20th of May, 1862, 12 Stat. 405, recited in the libel, two offences are there noted: the transportation in violation of the act and the regulations of the treasury, and the other, the attempt so made to transport them.

The charge, therefore, in the libel is, that the owner or possessor of the gold coin was transporting the same to Bayou Sara; or, in his language, "said gold coin was being transported to Bayou Sara."

Now, *without any reference to the distinction*, we think it may be affirmed that said coin was not being transported at all. When seized, it was in New Orleans. It had not left the city, and was at rest in the city. It is not pretended that there is any law preventing the gold from being removed from one part of the city to another. If the libellant had intended to rely on the fact that it was a mere attempt, and that the

attempt to transport consisted in taking it from one part of the city of New Orleans and placing it upon a steamboat at rest then, but about to proceed to some certain place in the possession and under the control of the insurgents, it should have been so stated in the libel at length. To describe the offence as is done, viz.: that the gold was being transported, etc., is to say that the gold coin was on its voyage—that the steamboat was actually leaving New Orleans.

Tnis view of the case is more critical than the one already taken, we admit, but it comes under the authorities cited. But whatever the Court may think of it, it does not weaken the other position, that there is no proof that said coin was being transported to or bound to Bayou Sara, as alleged in the libel.

III.

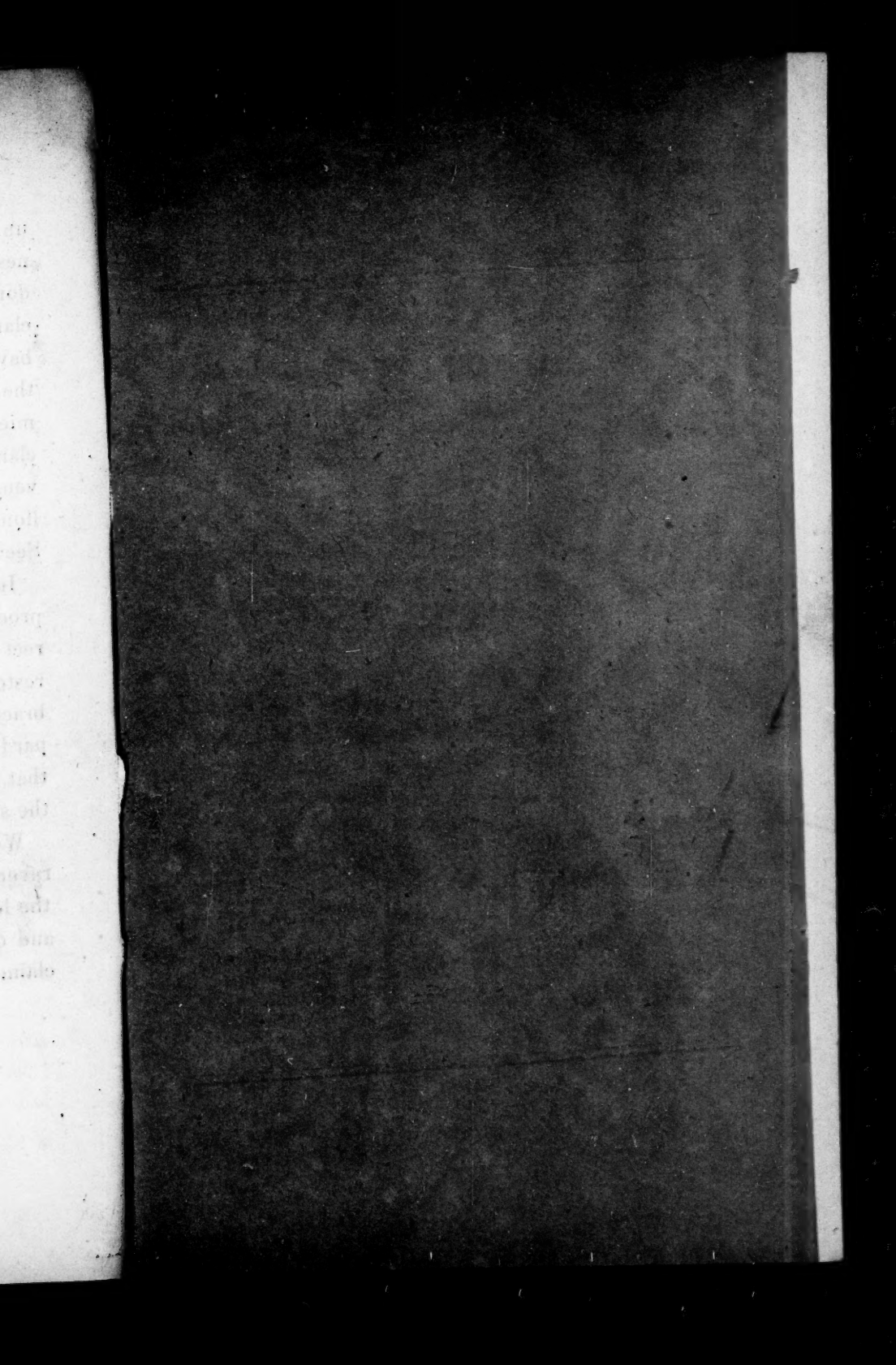
It may, perhaps, be urged that the proclamation of 16th August, 1861, relied on in the libel, and pleaded (pages 2 and 3), under which the claimant most clearly had a right, as a loyal citizen within the territory occupied by the forces of the United States, to traffic and to keep his property at his domicil, under his own ward and care, is not applicable, and that the claimant must he held, notwithstanding his loyalty, to be an enemy until the close of the war, and not entitled to have his property at his domicil, then his act of attempting to remove his gold to his domicil, which is sought to be declared an

unlawful act, was fully obliterated by the various amnesty proclamations. For the claimant cannot be domiciled both within and without the territory declared in insurrection at the same time. He must have the rights of belligerent or citizen—the one or the other. If he is to be regarded as one of the enemies of the United States, because in a district declared to be in insurrection, then all his acts in contravention of the United States in suppressing the rebellion, while domiciled in such district, are pardoned. See Proclamation of 25th December, 1868.

Indeed, without any reference to his domicil, the proclamation granting amnesty for any direct or indirect participation in the insurrection, for treason, with restoration of all rights, ought to be construed to embrace all minor offences. When a Government has pardoned all the grave offences, it may be assumed that all minor ones of the same general, though not the same aggravated nature are also included.

We respectfully submit that the decree ought to be reversed, and the cause ought to be remanded to the lower court, with directions to dismiss the libel, and order the restoration of the coin seized to the claimant.

E. T. MERRICK,
for Appellant.



United States Supreme Court.

No. 131 DEC. TERM 1871.

GAY ET AL.

vs.

THE UNITED STATES.

It does not seem necessary to reply to the argument of the Assistant Attorney General, except to say: that the reason why Gay was not examined as a witness, was that at the time the testimony was taken, and the case tried in April and May, 1864. R. p. 12, 16, he was precluded from being a witness by the laws of his own State, and the United States.

The law was not amended until July of that year, and the amendment, smothered as it was in the appropriation bill, was not generally known in Louisiana until long afterward. 13 Stat. 351.

Gay would gladly have been a witness, had he known that his testimony could have been received. It would have shown that under the permanent Federal rule in his vicinity, the protection of the large armies above him, the fortifications of Port Hudson and Vicksburg, in the hands of the National forces, there was no

reason why he should not do, as very many people prefer to do, take care of their own money, and keep it at his own house as he intended to do. The result justified his confidence in the Federal Government.

Freeman's testimony is entirely corroborated by Mr. Edwards, and they are both trustworthy and respectable persons, one of whom, Edwards, at least, were well known to Judge Durell.

Freeman, had he not been a reliable person, would not have been entrusted to take the gold to Gay's plantation, and return it to the city if Gay or his agent was not seen.

Those who know LaPonite, the tool of the informer, who did not even know the given name of the real Freeman, and whose hearsay testimony was directly attacked without any attempt to support it, would hardly think his statement of a loose conversation with Freeman, some time after his agency had ceased, (if any such conversation ever took place,) deserved the stress laid upon it by the learned Assistant Attorney General.

If the government had deemed it necessary to inquire into other dealings of Gay, it would have insisted upon answers to the questions which the witness did not answer. They were inquiries in relation to other transactions, and the government seems to have waived the answers, no doubt considering that there were valid objections to the same.

If the government, under the act of 1862, had intended to rely on the supposed fact that the gold was in much more danger of falling iuto the enemies' hands at Gay's plantation than in New Orleans, then the

libel should have been differently framed. It should then have averred some order of the secretary of the treasury, prohibiting the removal to the plantation or that part of the State, should have alleged that there was *imminent danger*, that such goods, wares, or merchandize would fall into the possession of, or under the control of insurgents, and also shown a violation of the prohibition. The claimant, then would have been apprised of what proof would be needed to meet these averments.

We respectfully refer the court to our former printed argument, and submit that the libel is wholly unsupported by pertinent proof as well as defective, in the other respects set forth in the original brief and argument.

E. T. MERRICK,
Of Counsel for Claimant

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

EDWARD J. GAY,
vs.
THE UNITED STATES. } No. 113.

ARGUMENT FOR THE UNITED STATES.

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ARGUMENT FOR THE UNITED STATES.

I.

The first point relied upon by the appellant is untenable. Whether money carried upon the person for ordinary personal use comes within the provisions of the act of July 13, 1861, section 5, (12 Stats., 257,) and the suplementary act of May 20, 1862, (*ibid.*, 404,) so far as to be regarded as "goods, wares, or merchandise," within the prohibitions of those acts, need not be considered. But it is very clear that where money is transported in packages, as the money was in this case, not by the owner, but by an agent carrying it to him, it is to be regarded as coming within the meaning of "goods, wares, or merchandise." An action of trover will lie for the conversion of money in a bag.

Jackson *vs.* Anderson, 4 Taunt., 24.

Orton *vs.* Butler, 5 B. and Ald., 652.

So, in an action against a common carrier for failure to deliver ninety double eagles received in a bag, to be transported to the plaintiff, the supreme court of Massachusetts. adjudged, that the coin must be considered as a commodity, and damages assessed accordingly.

Cushing *vs.* Wells, Fargo & Company, 98 Mass., 550.

And this point has been expressly adjudged by Mr. Justice Miller, in the eighth circuit.

The United States *vs.* Four Thousand American Gold Coins, 1 Woolw., C. C., 217.

Indeed, it is impossible to believe that Congress intended it to be otherwise, for no "goods, wares, or merchandise" would be more available for the military operations of the insurgents than coined money, "the sinews of war." An interpretation of the statute which would allow this to be carried to them, while the transportation of everything else was forbidden, would, to a great extent, defeat the very object of the statute. The cases cited by the appellant were decided under the strict rules of technical criminal pleading, and are inapplicable to this statute, which must be so interpreted if possible as to give effect to the intention of the legislature.

II.

Section third of the act of 1862, (*supra*,) enacts:

"That the Secretary of the Treasury be and he is hereby further empowered to prohibit and prevent the transportation in any vessel, or upon any railroad, turn-

pike, or other road or means of transportation within the United States, of any goods, wares, or merchandise of whatever character, and whatever may be the ostensible destination of the same, in all cases where there shall be satisfactory reasons to believe that such goods, wares, or merchandise are intended for any place in the possession or under the control of insurgents against the United States; or that there is imminent danger that such goods, wares, or merchandise will fall into the possession or under the control of such insurgents; and he is further authorized, in all cases where he shall deem it expedient so to do, to require reasonable security to be given that goods, wares, or merchandise shall not be transported to any place under insurrectionary control, and shall not, in any way, be used to give aid or comfort to such insurgents, and he may establish all such general or special regulations as may be necessary or proper to carry into effect the purposes of this act; and if any goods, wares, or merchandise shall be transported in violation of this act, or of any regulation of the Secretary of the Treasury, established in pursuance thereof, or if any attempt shall be made so to transport them, all goods, wares, or merchandise so transported, or attempted to be transported, shall be forfeited to the United States."

This act is, undoubtedly, very rigid, and may often have operated in special cases with no little harshness; but it is to be remembered that it is a statute passed in times of war for military purposes and to prevent supplies reaching the enemy. In order to prevent this, it was necessary that anything which might assist the enemy, and which was being conveyed towards the rebel lines, should be watched with a good deal of jealousy; and the statute does, in effect, throw the

burden of proof, in suspicious cases, upon the claimant, to show that the property he was conveying was not intended to reach the Confederate forces. Thus, by the statute, the ostensible destination of the goods, wares, or merchandise is made immaterial; and the Secretary of the Treasury is empowered to prohibit the transportation of goods wherever there is imminent danger that they will fall into the possession or under the control of the insurgents.

In this case the evidence was sufficient to support the charge in the libel. The only two persons whose testimony could be very material were Gay, the claimant, to whom the gold was ostensibly being carried, and who owned it, and Freeman, who was transporting it. Gay had sent to Edwards from his plantation on the Mississippi for this gold. Edwards testifies that he did not know for what purpose Gay needed the money. Gay was a sugar and cotton planter, who likewise seems to have dealt in cotton—buying and selling it Assuming what is contended below, that he was a loyal citizen residing permanently within the federal lines, it is difficult to perceive why he desired to take a very large amount of gold coin from New Orleans, where it was in comparative safety, to a distant plantation, where it would be much more liable to danger from military operations and from ordinary robbery. The times in Louisiana were not so quiet as to enable us to believe that the gold was being conveyed to Gay's plantation simply to be out of danger. It is a very material point

in the Government case that Gay himself was not examined as a witness in the district court. (See Clifton *vs.* United States, 4 How., 242, 247, 248.)

Freeman, the only other person who knows very much about the destination of the gold, is contradicted by Lapoint as to what he said in regard to the destination of the gold. Lapoint (Record, page 8) expressly swears that Freeman told him that he was carrying this gold to buy cotton within the Confederacy, and that the gold belonged to Gay. Freeman himself denies this, (page 12,) but on cross-examination he refused to answer almost every important question that was put to him, and, from the little revealed in respect of him by the evidence, he does not seem to be a person whose testimony was of much value in a case of this kind. Gay had traded with the enemy, although it is contended it was done under a permit, (see letter, page 14;) and even if he did not intend to use this gold to buy cotton within the Confederate lines, or to allow it to go within the Confederate lines, without first obtaining a permit from the Government to trade with the enemy, nevertheless this did not justify his attempting to carry the gold to his plantation, for this purpose, without first obtaining permission from the authorities so to do.

When we consider, therefore, the state of the country, that Gay lived near the Confederate lines, (although exactly how near is immaterial, as it was much nearer than New Orleans, and at least in the immediate vicinity of them,) and that a large amount of gold, at a time,

too, when gold was of great value in consequence of the depreciation of the ordinary currency, was being transported to him at his request, by a person who had been engaged in cotton speculations and trade, and was thus being carried from a place of security to a place of comparative insecurity, for no particular purpose, as it appears; and that Gay, although claiming to be a loyal citizen, has not submitted himself to an examination in this case; that Freeman is contradicted by another witness upon a most material part of his testimony, and declined to answer, by direction of the claimant's counsel, many important questions in his cross-examination; it is contended that the testimony was such as justified the decree of the circuit court. The circumstances of the case were suspicious enough to throw the burden of proof upon the claimant, and that burden of proof he has signally failed to maintain.

The evidence in the case sufficiently supports the allegations in the libel. The gold had been taken by Freeman from Edwards, and carried by him on board of the steamer, which was going up the river. It was, therefore, being transported. And if it was intended ultimately to reach Bayou Sara, and the country beyond that, or if an attempt was made "by the owner or possessor of said gold to transport it to Bayou Sara," as is likewise alleged in the libel, then it is immaterial that the first temporary destination of it was Gay's plantation, this side of that place.

III.

The third point suggested by the appellant's counsel in his argument, although apparently not urged very earnestly, is, that the appellant came within the amnesty proclamations. Nothing of the kind is pleaded, but (passing this objection) there are two answers to the argument:

First. That Gay having always been a loyal citizen, did not need any pardon, and no pardon granted to those who took part in the rebellion could affect him.

Second. This being a proceeding *in rem* to enforce a forfeiture against the gold, if the property was liable to forfeiture, the title to the United States to the property was perfect at the moment the forfeiture was incurred, and a subsequent pardon cannot divest such title.

The United States *vs.* Grundy, 3 Cranch, 338.

The Distilled Spirits, 11 Wallace, 368, and cases cited.

C. H. HILL,
Ass't Attorney General.